

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,

)

Plaintiff,

)

MEMORANDUM DECISION AND
ORDER DETAINING DEFENDANT

vs.

)

DON CODY NELSON,

)

)

Case No. 2:17-CR-00714 DS

Defendant.

I. INTRODUCTION

This matter is before the court on Defendant Don Cody Nelson's Motion for Review of Detention. The Court held a hearing on the Motion on July 11, 2018. For the reasons discussed herein, the Court orders Defendant be detained pending trial.

Mr. Nelson is charged in an Indictment with one count of Felon in Possession of a Firearm. Magistrate Judge Pead conducted a detention hearing on July 10, 2018, and concluded that Mr. Nelson be detained. Mr. Nelson seeks review of that decision.

To determine whether there are conditions of release that will reasonably assure the appearance of Defendant and the safety of any other person and the community, the Court considers the following factors:

(1) the nature and circumstances of the offense charged, including whether the offense ... involves ... a controlled substance [or] firearm ...;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including–

(A) the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person’s release....

18 U.S.C. § 3142(g).

II. DISCUSSION

After considering the factors set forth in 18 U.S.C. § 3142(g), and the information presented at the July 11, 2018 detention hearing, the Court concludes, de novo, that Mr. Nelson must be detained pending trial because the Government has proven by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community.

Mr. Nelson is charged as a felon in possession of a firearm. The weight of evidence favors detention.

The Court also considers the history and characteristics of Mr. Nelson. He is a convicted felon. He has a history of prior arrests and convictions including charges involving felon in possession of firearm, and multiple counts for several types of charges including theft and possession and use of controlled substances. The defendant has numerous failures to appear. The defendant has a history of violence. He has a mental health history with the defendant reporting he has been diagnosed

with both depression and an anxiety disorder. He has a long history of substance abuse including the use of methamphetamine. The defendant reported walking away from treatment prior to completion. The defendant has committed new criminal conduct while under terms of supervision. In addition, the defendant is unemployed and stated it has been a long time since he was employed. Finally, the defendant has multiple violations of probation and recently completed a one year term of incarceration for a probation violation. In sum, these considerations weigh in favor of detention.

Finally, as to the nature and seriousness of the danger to any person or the community that would be posed by Mr. Nelson's release, the reasons set forth above, weigh in favor of detention.

III. CONCLUSION

Based on the above stated reasons, Mr. Nelson is ordered detained pending trial. Although the court's analysis does not support the conclusion that Defendant poses a risk of flight, the analysis does support the conclusion that detention is required to assure the safety of any other person and the community.

Dated this 11th day of July, 2018

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Sam", written over a horizontal line.

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT